

Applicant has noted several typographical errors in reviewing the specification and appropriate corrections are submitted above to cure the noted errors.

The Office Action rejects original claims 12, 13, 16 and 17 as anticipated by Campbell U.S. Patent No 4,991,265 (hereinafter "Campbell patent"). In support of that position, it is indicated that the Campbell patent shows an elastomeric band 22, a retainer 26 between a body defining a T-shaped notch for receiving widthwise a portion of the elastomeric band, a band receiving portion of said notch, a first (A) and second (B) tabs extending axially over said band receiving portion of said notch and defining a mouth portion (near 36') of said notch, wherein said mouth portion has a width less than the width of the elastomeric band (see figs. 2-6 and col. 4, ll. 3-18).

The present invention relates to the utilization of a conventional rubber band 10 of substantial width with an attached retainer for securing the ends of the rubber band when wrapped around one or more objects. The retainer 5 is an elongate member having one or two notches adapted to receive the rubber band 10. One or two tabs 28, 29 of the retainer overlie a band receiving portion 23 of retainer 5. The rubber band 10 is inserted through a mouth portion 24 formed between the tabs 28, 29, whereby the tabs maintain the retainer on the rubber band to prevent separation of folded over ends 11 and 12 of the rubber band when positioned as seen in Figs. 1-3 of Applicant's drawings. Applicant's device thus employs a conventional rubber band with a simple one piece retainer which is selectively attached to the rubber band to form a wrapping and retaining device.

It is submitted that claim 12 as amended clearly patentably distinguishes over the Campbell patent. Initially, it is to be noted that claim 12 recites an "elastomeric band" which, in the context of the instant application, is clearly a conventional continuous rubber band. The Campbell patent contemplates a specially constructed flexible strap consisting of short elastomeric strap segments 23 having a round cross-section interconnected by spaced circular relatively flat locking disks 24. Elongated strap 22 is joined at one end to a head 26 which is a locking member selectively interengageable with any one of the locking disks 24 to form a tie cord device 10 of varying circumferential extent. It is also to be noted that lock disks 24 are sized to be significantly wider than strap segments 23 and are comparatively structurally stiff compared to the strap segments which have a substantial degree of longitudinal resiliency or elasticity. Thus, the device of the Campbell patent

clearly is not an elastomeric band, but rather a strip of elastomeric members which, together with other features, have one end having a lock clasp selectively secured to one of the disks interposed in the length of the strap.

Claim 12 as amended recites that the elastomeric band has a width substantially greater than its thickness. This is to distinguish Applicant's utilization of a relatively wide conventional rubber band as opposed to conventional rubber bands having a square or circular cross-sectional configuration. The elastomeric strap segments 23 of the Campbell patent have a "round cross-section" (see col. 4, ll. 3-7). Applicant's usage of a conventional rubber band having a width substantially greater than its thickness is material to the characteristics of the claimed retainer to effect a confined attachment of the retainer to the rubber band.

Further, claim 12 specifies that the mouth portion of the notch in the retainer has a width less than the width of the elastomeric band. In Applicant's invention, it is this presence of a tab extending over the band receiving portion of the notch to form a mouth which is less than the width of the elastomeric band that maintains Applicant's retainer on the elastomeric band after it is initially inserted, irrespective of whether the band is in a tensioned state or is untensioned awaiting utilization as a wrapping device. In the Campbell patent it is expressly indicated that the central longitudinal slot 42 between the edges of the wing members 34 conveniently permits passage of the strap segments 23 to avoid interference with the locking procedure. (Campbell spec., col. 4, ll. 52-56). Thus, it is clear that in the Campbell patent the width of the slot between the wing members is greater than the diameter of the round strap segments which must pass therethrough to utilize the device of the Campbell disclosure. In contrast, Applicant's mouth portion has a width less than the width of the elastomeric band which is the opposite of the Campbell structure. Thus, it is submitted that amended claims 12 clearly patentably distinguishes over the structure disclosed in the Campbell patent for a plurality of reasons.

Claims 14-15 and 18-20 were rejected in the Office Action under 35 U.S.C. § 103 as obvious in view of the subject Campbell patent. In that respect, the Office Action concedes that the Campbell patent does not include a second notch located substantially diametrically opposed to the first notch. It is thereafter asserted that duplicating the components of a prior art device is a design consideration within the skill of the art referencing the *In Re*

Harza case. It is then concluded that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Campbell with a second notch, wherein the second notch is formed by tabs similar to but opposed to tabs "(A, B), such that both sides of said wrap is of a differing color and said wrap may be used to communicate information depending on which side is facing outwards." Applicant does not find any suggestion in the Campbell patent of providing a second notch formed by tabs similar but opposed to the tabs (A, B) T both sides of the head 26. Nor does Applicant find a teaching that a second notch may be provided, such that both sides of the wrap are of a differing color so that the wrap can be used to communicate information depending on which side is facing outwards. Applicant has carefully reviewed the Campbell patent but does not find such a factual disclosure regarding coloring, such that the Office Action premise appears to be factually unsupported.

The *Harza* case holds that the mere duplication of parts has no patentable significance unless a new and unexpected result is produced. Assuming, *arguendo*, that new and unexpected result is necessary such exists in the present circumstances. When using a single notch, it is possible that the forces attendant the tensioning of the rubber band may be placed exclusively upon the tabs retaining the rubber band. In the form of Applicant's invention employing two notches, it is assured that the force supplied by the rubber band acts across the entire diameter of the retainer on the portion between the notches, with the notches serving merely to maintain the retainer attached to the rubber band. Thus, a new operational result is clearly achieved by employing the two diametrically opposed notches. Thus, claims 14-15 and 18-20 are believed to be clearly patentably by virtue of their dependence upon claim 12, which is believed to be allowable, and for the additional reasons discussed herein with respect to the 35 U.S.C. § 103 rejection.

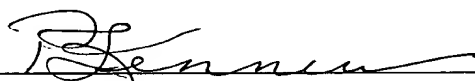
New independent claim 21 is generally patterned after claim 12 with additional limitations. The claim specifies an elastomeric band which Campbell does not have for the reason detailed above in conjunction with the discussion of claim 12. Claim 21 additionally specifies a "continuous" elastomeric band which further specifies the nature of the elastomeric band, which the Campbell cord tie device is not. The claim further specifies that the band has a substantial width to thickness ratio, whereas the Campbell device provides elastomeric strap segments 23 of round cross-section. Claim 21 further indicates

that the retainer has an "elongate" body including the notch and related structure. Finally, claim 21 specifies that the mouth portion has a width less than the width of the elastomeric band, which is clearly distinguishable over the Campbell patent for the reasons set forth above in conjunction with claim 12. Claims 22-29 specify additional features which distinguish over the Campbell patent by reason of a second notch for the reasons discussed above in conjunction with the obviousness rejection and the specification of the retainer as cylindrical (claim 28) and the location of the notch medially of the elongate body (claim 29).

Applicant has also submitted a new independent claim 30 defining the band as a member which is adapted to be folded over to form a first and second end with an elongate retainer having a body defining a notch for receiving the first end of the elastomeric band. The retention of the elastomeric band is specified by the presence of a mouth portion having a width less than the width of the rubber band so that the retainer with the first end is receivable in the second end and held by the retainer to prevent separation of the first and second ends when the rubber band is wrapped about an object. This interengagement between the ends of a rubber band is in no way taught or suggested by the Campbell patent.

In view of the above amendments to the claims and related discussion, reconsideration and favorable action on claims 12-30 is earnestly solicited.

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